

THE
TRIAL
O F.
GENERAL FOWKE,
Late GOVERNOR of GIBRALTAR,
AT A
COURT MARTIAL

Held on Tuesday the 10th of August, 1756.

In which is comprised,

The original ORDERS sent to that General, in
Three Letters from the Secretary at War, with the
MINUTES of the Council of War held at Gib-
raltar on that Occasion:

ALSO,

Lord ANSON's LETTER to Admiral BYNG,
respecting those Orders; with the Reasons for
not putting them into Execution.

DUBLIN:

Printed and sold at the Publisher's Shop in Pen-
broke Court, Castle Street. 1756.

Vet. AS e. 3265

1st from E. Hall.



THE
TRIAL
OF
GENERAL FOWKE.

SOME Business having brought me to *London* at the Time of the holding the Court Martial upon the late *Lieut. Gen. Fowke*, my Curiosity led me to be present at it; and happening to be detained in my return Home, for several Hours, by the Rain at an Inn, without Books, I amused myself with writing down the Tryal, as perfectly as my Memory would allow me. As the Court Martial was held in the House of the Judge Advocate, and in a less Room of the House, where not above a Dozen People besides Officers could crowd in, I suppose, that there are but very few People who can be truly informed of an Affair of that great Importance, in which the Nation is so much concerned. My Readers will make the proper Allowances for its having been written purely from Memory. Words cannot be answered for, tho' many of the leading and most expressive Ones are preserved; but for the Circumstances, I believe there are very few of any Importance omitted; I am sure there are none added.

The Members being sworn, viz.

General Sir Robert Rich, President
 General Sir John Ligonier
 Lieutenant General Hawly
 Lieutenant General Lord Cadogan
 Lieutenant General Guise
 Lieutenant General Onslow
 Lieutenant General Pulteney
 Lieutenant General Huske
 Lieutenant General Campbell
 Lieutenant General Lord de la Warr
 Lieutenant General Charles Duke of Marlborough
 Lieutenant General Wolfe
 Lieutenant General Cholmondeley
 Major General Lascelles
 Major General Bocland
 Major General Lord George Beauclerk

The Court was opened by the Judge Advocate in two or three round Sentences, importing, that he was by his Place to appear as Prosecutor, and that he was sorry for the Occasion. To which the Prisoner replied, with Professions of his Fidelity and Loyalty to his Majesty, of the great Misfortune he esteemed it to appear in that Manner before the Court; and of his Concern, lest the Honour of his Profession should be hurt thro' his Means. Then the Lieut. General's Commission as Governor of Gibraltar, was read, but was made no use of, nor once mentioned afterwards during the whole Tryal.

The Judge Advocate then read the three following Letters:

To

To Lieut. Gen. Fowke, or, in his Absence, to the Commander in Chief in his Majesty's Garrison of Gibraltar.

SIR, War Office, March 21, 1756.

I Am commanded to acquaint you, that it is his Majesty's Pleasure, that you receive into your Garrison Lord Robert Bertie's Regiment to do Duty there; and in Case you shall apprehend, that the French threaten to make any Attempt upon his Majesty's Island of Minorca, it is his Majesty's Pleasure, that you make a Detachment out of the Troops in your Garrison, equal to a Battalion, to be commanded by a Lieutenant and Major, such Lieutenant and Major to be the eldest in your Garrison, to be put on board the Fleet for the Relief of Minorca, at the Disposition of the Admiral.

I am, Sir, your Humble Servant,

BARRINGTON.

To Lieut. Gen. Fowke, or, in his Absence, to the Commander in Chief, at Gibraltar.

SIR, War Office, March 28, 1756.

I Am commanded to acquaint you, that it is his Majesty's Pleasure, in Case you shall apprehend, that the French threaten an Attempt upon Minorca, that you make a Detachment from the Troops in your Garrison equal to a Battalion, commanded by a Lieutenant-Colonel and Major, for the Relief of that Place, to be put on Board the Fleet at the Disposition of the Admiral; such Lieut.-Col. and Major to be the eldest in your Garrison.

BARRINGTON.

To

To Lieut. Gen. Fowke, or, in his Absence, to the Commander in Chief, in his Majesty's Garrison in *Gibraltar*.

SIR, War Office, April 1, 1756.
It is his Majesty's Pleasure, that you receive into your Garrison the Women and Children belonging to Lord Robert Bertie's Regiment.

BARRINGTON.

The Secretary at War being sworn, proved the Orders.

Judge Advocate. I suppose that the Lieut. General, in his Defence, will call for the Minutes of the Council of War held at *Gibraltar*, and therefore I do not read them.

Prisoner. I have prepared my Defence in writing, and desire that the Judge Advocate may read it.

Court. Would you not examine the Secretary of War now he is here?

Lieut. Gen. Fowke. I desire my Defence may be read now, and hope his Lordship will give me leave to ask him such Questions as I shall think proper hereafter.

Sec. at War. I shall stay in Court as long as this Trial is depending, and shall answer all Questions which make for the Lieutenant General with more Pleasure than those which make against him.

Prisoner's Defence was read. " That he received these three Letters together by the same Hand, and must therefore take them together. " That his Orders were *confused* at least, if not *contradictory*: That if they were confused, then " he

" he could not know when he had executed them;
 " and if they were contradictory, they could not be
 " executed at all."

Lieut. Gen. Fowke then asked the Secretary at War, Did not your Lordship apprehend, that the second Letter of the 28th superceded the first of the 21st?

Sec. at War. I did apprehend so.

Lieut. Gen. Fowke. Should it not have been mentioned then in your Lordship's second Letter, that the first was superceded?

Sec. at War. I did not know that that first Letter had gone, otherwise, I might have said in my second Letter *notwithstanding my former Orders*.

Lieut. Gen. Fowke. That Word *notwithstanding* would have saved an infinite deal of Trouble: But is it not the Custom of your Office, when second Orders are intended to supercede the first, to mention that they do so?

Sec. at War. I had then been but about four Months in my Office. In the Case of another [1] Officer's Orders, where the first was gone away by a former Messenger, and the second Order, superceding it, was to be sent by another Messenger; in that Case, I remember. I did say, in my second Letter, *notwithstanding your former Orders*; but in this Case I did not advert to that Circumstance, as I knew that all my Letters were to be carried by the same Hand, and to go together.

Lieut. Gen. Fowke. Your Lordship has sat at another Board; was it not the Custom there?

Sec.

Sec. at War. I cannot recollect any Thing of what passed at that Board.

Court. Did not your Lordship send those Letters yourself?

Sec. at War. I did not send the Letters myself, I wrote them and delivered them to the charge of my Secondary: he is here, or at the War-Office, to answer to what the Court may desire to know on that Head.

Mr. Sherwood was sworn by the Judge Advocate, and asked what he had done with the Letters?

Sherwood. I delivered the first Letter; under a flying Seal, to Gen. Stewart, while he was in Town. I sent the second Letter, under a flying Seal, inclosed to Gen. Stewart at Portsmouth; and the third in the same manner. I delivered the first Letter into the General's own Hand. He set out for Portsmouth the 25th, and I gave it him the 24th. They all know how that Letter came to go.

The Judge Advocate then went on with reading the Prisoner's Defence.

" My Orders being confused and contradictory, I
" called a Council of War, not to deliberate whe-
" ther I should obey my Orders or not, but only
" to take their Sense what was the meaning of
" them."

Lieut. Gen. Fowke then urged, and frequently repeated it during his Trial, That his Orders were not absolute, but discretionary; and that the Execution of them was left to his and Mr. Byng's Judgment; and, to prove that the Secretary at War did not himself think, for a long Time after the sending them, that those Orders were absolute; he produced

duced a Letter of his, wrote the 12th of *May*, which he desired might be read.

Judge Advocate. To Lieut. Gen. *Fowke*, or the Commander in Chief at *Gibraltar*.

SIR, War Office, *May 12, 1756.*

I Wrote to you by Gen. Stewart: If that Order is not complied with,-----

Lieut. Gen. *Fowke*. How could his Lordship write, if that Order has not been complied with, if he had thought it an absolute Order, and not discretionary?

Judge Advocate goes on reading.-----

if that Order has not been complied with, then you are now to make a Detachment of 700 Men out of your own Regiment and *Guise's*, and also another Detachment out of *Poultney's* and *Penmure's* Regiments, and send them on Board the Fleet for the Relief of *Mahon*. But if that Order has been complied with, then you are to make only one more Detachment of 700 Men, to be commanded by another Lieut. Col. and Major, and to send it to *Mahon*. And you are also to detain all such empty Vessels as shall come into your Harbour, and keep them in readiness for any farther Transportation of Troops. I have also his Royal Highness the Duke of Cumberland's Commands, to desire that you will keep your Garrison as alert as possible during this critical Time, and see that they strictly perform their Duty; taking Care, however, not to fatigue your Garrison,

BARRINGTON.

E.

Sec.

Sec. at War. The fittest Person to explain that Letter, I should think, is its Author. But I must first observe, that this Letter expressly supposes, that the Orders sent in my former Letters were absolute, and not discretionary.

Here his Lordship was stopped short by a Doubt being made by the Court, whether he could be regularly admitted to explain that Letter.

Lieut. Gen. Fowke. The Letter is very plain in itself, and does not need any Explication.

President. Every Gentleman has a Right to explain his own Letter.

Court. If we are some of us of Opinion, that his Lordship has a Right to explain his Letter; and others, that he has not; then we must clear the Court, and debate that Matter among ourselves.

Sec. at War. I thought that it had been strictly regular for me to explain that Letter; but if any one Member of the Court has any Doubt about the Regularity of it, that is alone of sufficient Weight with me to make me decline giving any farther Explanation of it.

Lieut. Gen. Fowke then said, that he had offered to make the Detachment if Mr. *Byng* thought it necessary, in the hearing of Mr. *West*.

Mr. *West* being sworn, Lt. Gen. *Fowke* addressing himself to him, You remember, Sir, after the Council of War was over, I came out of the Cockpit, and went to Mr. *Byng* in the State-Room, and said, Well, Sir, I have shewn you the Resolutions of our Council of War, and you have read them; but, notwithstanding that, I will make the Detachment if you think it necessary.

Adm.

Adm. West. I do not remember that you shewed the Minutes, or that Mr. *Byng* read them; but I do remember, that there was something passed on that Head, but I rather apprehended it to be loose Talk than Business. You offered to make the Detachment if he thought it necessary; and he said, I don't believe it will be wanted, or, I don't think it necessary.—But, to do the Admiral Justice, I do not apprehend that he thought himself bound to give an Answer to that Question.

The Judge Advocate then read the remaining Part of the Lieutenant General's Defence.

" The whole Number which I had then in Garrison
 " was but 2700 Men. I had spared to Mr. *Edgcomb's* Ships 230, which, with 40 of my Men
 " which he had left in St. *Philip's*, made 270.
 " The ordinary Duty of the Garrison required in
 " Workmen and Guards 800 Men, so that I had
 " then only 130 Men more than three Reliefs. If
 " I had made the Detachment of a Battalion, and
 " put it on Board the Fleet, I should not then have
 " had much more than two Reliefs, and this at a
 " Time when I believed the Place was in Danger
 " of being attacked, for good Reasons, which I
 " don't think myself at Liberty to mention."

The Lieut. Gen. then returned to his first Plea, of the Doubtfulness of his Orders, and said, I know very well that my Duty did not allow me to hold a Council of War, to deliberate about the obeying of my Orders, and therefore I called it only for their Help in understanding of them.

Court. Don't you read the Minutes of the Council of War?

The Judge Advocate then read,

General Fowke's Letter to the Secretary of War,
dated at *Gibraltar*, about the 6th of *May* 1756.

My LORD,

I Have the Honour of your three Letters: Upon the receipt of them, I called a Council of War, to consider of the State of his Majesty's Forts and Garrisons in the Mediterranean; and it appearing to us that the sending a Detachment equal to a Battalion would be an ineffectual Relief to Minorca, and a weakening of this Garrison, we have determined it to be not for his Majesty's Service to make the Detachment.

Inclosed are the Minutes of the Council of War.

The Judge Advocate then read the Minutes.

" At a Council of War held at *Gibraltar*, May
" 1756, the three Letters of the Secretary of War
" were read, and are as follow:

[Here followed the three above mentioned Letters, of the 21st and 28th of *March*, and 1st of *April*. The Orders of the Admiralty to Admiral *Byng* were also read, and are as follows:]

SIR,

I T being his Majesty's Pleasure that Lord Robert Bertie's Regiment do serve on Board your Fleet, to do Duty there; and his Majesty having issued Orders by the Secretary of War to General Fowke, to make a Detachment equal to a Battalion, from his Garrison, for the Relief of Minorca; you are to conform yourself to the said Orders, and to carry that Detachment on Board your Fleet, and land them at Minorca.

Minorca. And in case, upon Conference had with General Blakeney, he shall think it necessary, you shall then land Lord Robert Bertie's Regiment also at Mahon, from on Board your Fleet.

Sign'd,

A N S O N, &c.

Resolved,

" Upon Account of the Alteration of Circumstances which have arisen since the Date of the above Letter, we having received undoubted Intelligence of the French Army being actually landed in Minorca, to the Number of from 13 to 16000 Men; and a French Fleet being stationed before the Harbour, of 16 Ships, 12 of which are of great Force. That the sending a Detachment equal to a Battalion from hence, will be an ineffective Supply for the Relief of the Place, and the dispossessing the French from the Island; and will be a weakning of this Garrison. And it appearing to us to be the Opinion of the Engineer, who is best acquainted with the Place, and of such other Officers of this Garrison who have been at Mahon, that the Troops cannot be landed, or at least not without great Difficulty, unless the French Fleet could be dispossessed from their Station; and Lieut. Gen. Fowke having already consented to spare from this Garrison One Hundred and Forty Men, to serve on board Mr. Edgcombe's Ships, to supply the Place of a like Number which he left at Mahon; and it appearing to us that the French Fleet is at least equal, if not superior to the English; it is therefore resolved

" solved that it is not for his Majesty's Service to
 " make such Detachment; because, in case of the
 " *Englif Fleet's* meeting any Disgrace from the
 " *French*, this Garrison will then be weaken'd, and
 " may be endanger'd, thro' the want of such De-
 " tachment.

Sign'd,

Lieut. Gen. FOWKE,
 STEWART,
 EFFINGHAM,
 CORNWALLIS,
 Lord R. BERTIE,
 Lieut. Col. COLVIL, &c.
 to the Number of about
 Ten or Eleven.

Gen. Fowke. I called that Council only to ask their Opinion about the Meaning of my Orders.

Court. The Council, by their Minutes, do not appear to have had any Doubt at all about their Meaning; but rather to have determined against the executing them.

Gen. Fowke. I can't help what those Gentlemen talked of.

Court. Your own Letter don't express any Doubt.

Gen. Fowke. (Whisper'd to by one of his two assistant Attorneys, who stood on each Side of him as Prompters, during the whole Trial) That Omission proceeded from the great Deference I paid to his Lordship in that high Office which he holds.

Judge

Judge Advocate. (Looking respectfully on the Court) I beg Pardon; but it is my Duty to observe, as it has been often said by the Lieut. Gen. that he called a Council of War only to know the Meaning of his Orders, that he has offered no Proof of this; and that his own Letter, and the Minutes of the Council, plainly imply that they had no Doubt at all about their Meaning.

As to what the General has said about his Orders being *discretionary*, the only *discretionary* Part of them is, what relates to the Distribution of the Men among the Ships of the Fleet, which is left to the Disposition of the Admiral.

The Court was of Opinion, that he was *Guilty* of the Charge, and adjudged that he should be suspended for the Space of one Year; since which his Majesty has thought fit to dismiss him from his Service.



